

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 23rd day of October, two thousand seven.

PRESENT:

HON. JOSÉ A. CABRANES,
HON. BARRINGTON D. PARKER,
HON. PETER W. HALL,
Circuit Judges.

RUI JIE LIN,
Petitioner,

v.

07-1495-ag
NAC

PETER D. KEISLER,¹
ACTING U.S. ATTORNEY GENERAL,
Respondent.

¹Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Acting Attorney General Peter D. Keisler is automatically substituted for former Attorney General Alberto R. Gonzales as a respondent in this case.

FOR PETITIONER: Gary J. Yerman, New York, New York.

FOR RESPONDENT: Peter D. Keisler, Assistant Attorney General; Lisa M. Arnold, Senior Litigation Counsel; Robbin K. Blaya, Trial Attorney, Office of Immigration Litigation, Washington, D.C.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals ("BIA"), it is hereby ORDERED, ADJUDGED, AND DECREED, that the petition for review is DENIED.

Petitioner Rui Jie Lin, a citizen of the People's Republic of China, seeks review of a March 26, 2007 order of the BIA affirming the August 4, 2005 decision of Immigration Judge ("IJ") Helen J. Sichel denying petitioner's applications for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). *In re Rui Jie Lin*, No. A98 354 189 (B.I.A. Mar. 26, 2007), *aff'g* No. A98 354 189 (Immig. Ct. N.Y. City Aug. 4, 2005). We assume the parties' familiarity with the underlying facts and procedural history of the case.

Where, as here, the BIA affirms the IJ's decision and supplements this decision, this Court reviews the decision of the IJ as supplemented by the BIA. *See Yan Chen v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). We review the agency's factual findings, including adverse credibility determinations, under the substantial evidence standard, treating them as "conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B); *see, e.g., Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004), *overruled in part on other grounds by Shi Liang Lin v. U.S. Dep't of Justice*, 494 F.3d 296 (2d Cir. 2007) (en banc). However, we will vacate and remand for new findings if the agency's reasoning or its fact-finding process was sufficiently flawed. *Cao He Lin v. U.S. Dep't of Justice*, 428 F.3d 391, 406 (2d Cir. 2005); *see also Xiao Ji Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 335 (2d Cir. 2006) (agreeing with this principle, but avoiding remand, in spite of deficiencies in adverse

credibility determination, because it could be confidently predicted that the IJ would adhere to the decision were the case remanded).

We conclude that the IJ's adverse credibility finding was supported by substantial evidence. The IJ properly found that there were "significant contradictions" in Lin's testimony, which could not be overcome because Lin failed to provide available corroborating evidence. *Zhou Yun Zhang*, 386 F.3d at 78. The IJ found it implausible that Lin could not leave China for five years following his release from detention given the current levels of illegal immigration from China. Noting that Lin's sister left China after Lin was released, the IJ reasonably refused to credit Lin's explanation that the smugglers only had a place for a female emigrant at the time. *Majidi v. Gonzales*, 430 F.3d 77, 79-80 (2d Cir. 2005). This inference was not based on "bald" speculation, see *Siewe v. Gonzales*, 480 F.3d 160, 168 (2d Cir. 2007), but on the IJ's "expert working knowledge" of emigration from China to this country. See *Hoxhallari v. Gonzales*, 468 F.3d 179, 186 (2d Cir. 2006).

Other findings by the IJ were also reasonable and supported her adverse credibility determination. Lin's testimony that his father had not left China after suffering persecution because he was too old was inconsistent with his father's letter stating that he had not left because he had not had the opportunity. That Lin would not know any details of his sister's alleged persecution despite having lived with her for six years following the alleged persecution was implausible. Finally, viewing the record as a whole, the long delay from the time Lin and his sister suffered persecution to the point at which each left China for the U.S. and their similar age, 21, when they arrived, made it likely that Lin had come to the U.S. to seek employment rather than fleeing persecution.

Having called Lin's testimony into question, the IJ properly found that his failure to produce testimony or an affidavit from his sister or from those with whom he claims are present when he practices Falun Gong in the U.S. rendered him unable to rehabilitate his testimony. *Zhou Yun Zhang*, 386 F.3d at 78. Taken as a whole the agency's finding, and the resulting denial of asylum, was supported

by substantial evidence. *Tu Lin v. Gonzales*, 446 F.3d 395, 402 (2d Cir. 2006).²

Because the only evidence of persecution depended upon his credibility, the adverse credibility determination in this case necessarily precluded success on his application for withholding of removal. See *Paul v. Gonzales*, 444 F.3d 148, 156-57 (2d Cir. 2006). Similarly, to the extent that Lin's CAT claim was based upon the same factual predicate as his application for asylum and withholding, the adverse credibility finding was also fatal to that claim. See *Xue Hong Yang v. U.S. Dep't of Justice*, 426 F.3d 520, 523 (2d Cir. 2005).

For the foregoing reasons, the petition for review is DENIED. As we have completed our review, any stay of removal that the Court previously granted in this petition is VACATED, and any pending motion for a stay of removal in this petition is DISMISSED as moot. Any pending request for oral argument in this petition is DENIED in accordance with Federal Rule of Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: _____

²Because we find that the agency's adverse credibility determination is supported by substantial evidence, we need not reach the BIA's supplementary discussion regarding the inconsistency between Lin's initial statement to immigration officials and his subsequent testimony.